

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.330 of 1999

Decided on: September 22, 2006

Swaran Dass

.....Appellant.

VERSUS

Santosh Kumari

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Sanjeev Kuthiala, Advocate.

For the respondent : Mr. N.K. Thakur, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant is the father of a male child, named Avtar Chand, who was five years of age at the time when a petition was filed by the appellant for his custody against the respondent, the mother of the child. The prayer for the custody of the child was opposed by the respondent and one of the pleas raised by the respondent was that in some earlier litigation between the appellant and the respondent regarding grant of maintenance allowance, the appellant had even denied the paternity of the child, whose custody was sought.

3. Parties went to trial. The Senior Sub Judge, exercising the delegated powers of District Judge, under the Guardianship and Wards Act, dismissed the petition, holding that it was in the interest of the child that his custody remained with the mother.

Whether the reporters of the local papers may be allowed to see the judgment?

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4. I have heard the learned counsel for the parties.

5. It is admitted case that in the proceedings, under Section 125 of the Code of Criminal Procedure, which the respondent had filed against the appellant for grant of maintenance allowance for herself and for the minor child, to whose custody this lis pertains, the appellant had denied that the child had been conceived by the respondent from his loins. In other words, he denied the paternity of the child. I do not think a father, who denies the paternity of the child to escape liability for maintenance of the child, would be a fit person for being entrusted with the custody of that very child. Learned counsel for the appellant says that the appellant should be permitted to meet the child and to visit him. The appellant admittedly being the father, can meet the child and also visit him, if he so desires.

6. In view of the abovestated position, appeal is dismissed.

September 22, 2006_(sd)

(Surjit Singh), J.